

1936 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1936)
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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6954. Removal by governor.

The duties of the governor under this section are not mandatory, are not merely ministerial, and cannot be coerced by mandamus. 179M337, 229NW313.

Protracted absences of justice from his town might amount to nonfeasance in office. Op. Atty. Gen., Mar. 19, 1929.

If municipal judge neglects his duties or corruptly violates his oath of office, his removal should be sought by petition to governor. Op. Atty. Gen., June 26, 1933.

Governor cannot remove village constable. Op. Atty. Gen., Aug. 31, 1933.

Persistent refusal or neglect to enforce sentence imposing fine may be made basis for removal of justice of peace. Op. Atty. Gen. (266b-9), Nov. 26, 1934.

6955. Special commissioner to take testimony.

179M337, 229NW313.

6957. Appointment—How long to continue—Impeachment.

No lawful ballots can be cast for office of sheriff at a general election unless term of incumbent, whether elected or appointed, expires on first Monday of January following such election. State v. Borgen, 189M216, 248NW744.

The provisions of Laws 1929, c. 413, prevail over this section, and a person appointed to fill a vacancy in a village office holds until the expiration of the term, and not merely until the next municipal election. Op. Atty. Gen., Nov. 13, 1931.

Vacancy in office of county commissioner is to be filled by full membership of city council where district lies wholly within city, though only part of council are elected from district, and term of appointee expires at beginning of official year next following next general election. Op. Atty. Gen. (124k), Aug. 25, 1934.

CHAPTER 48

Oaths and Acknowledgments

OATHS

6963. Oath of office.

A director of an independent school district who has taken an oath of office need not take a second oath when chosen as treasurer by the members of the school board. 171M376, 214NW258.

A public officer, on conviction of violation of the federal liquor laws, forfeits his office. Op. Atty. Gen., Feb. 10, 1930.

6965. Forms of oath, etc.

Attorneys suspended for misconduct. 177M203, 225 NW97.

6967. By whom and how administered.

List of officers authorized to administer oaths and take acknowledgments and requirements as to attachment of seal stated. Op. Atty. Gen., Mar. 23, 1933.

ACKNOWLEDGMENTS

6970. Form of certificate.

Probate court reporter need not attach seal to his acknowledgments. Op. Atty. Gen. (346g), May 22, 1935.

6971. Corporate acknowledgment—Evidence.

Op. Atty. Gen., March 23, 1933; note under §6967.

6973. By whom taken in this state.

Probate court reporter need not attach seal to his acknowledgments. Op. Atty. Gen. (346g), May 22, 1935.

6981. Execution according to foreign law.—All deeds and other instruments may be executed and acknowledged in a foreign country in accordance with the laws of the place of execution.

If the instrument be made out of the state, and in accordance with the laws of the place of execution, the fact that it was executed according to such laws, shall be proved as follows:

1. If within the United States, by the certificate of the clerk or other certifying officer of a court of record of the county or district in which the acknowledgment was taken, under the seal of such court, or by the secretary of the state or territory, under the seal thereof.

2. If in a foreign country, by the certificate of an officer of the United States authorized by this chapter to take acknowledgments therein, under his seal of office, if there be one.

3. If there be no such officer of the United States therein, then by the certificate of a counselor or diplomatic officer of any other nation with which the United States has diplomatic relations, in which case, the seal of such consular or diplomatic officer shall be certified by his Foreign Office or by the diplomatic representative of such nation in the United States.

4. Any instrument heretofore or hereafter executed, acknowledged and certified as provided herein, shall entitle such instrument to be admitted and read in evidence in all courts and elsewhere without other proof of execution. (R. L. '05, §2691; G. S. '13, §5748; Apr. 18, 1931, c. 201.)

(1).

If an instrument is executed in accordance with the laws of the place of execution, it is entitled to record in this state, provided there is attached thereto a certificate of the clerk or other certifying officer of the court of record of the county or district so showing. Op. Atty. Gen., Aug. 7, 1931.

6983. Acknowledgments after expiration of commission—Curative.

Laws 1929, c. 169, and Laws 1929, c. 214, legalizes acknowledgments taken by person after expiration of term.

CHAPTER 49

Fees

6987. Fees of clerk of district court.

Fees earned by clerk of district court, but outstanding on account should be included in the statement. Op. Atty. Gen., Jan. 7, 1932.

Fees received by clerk of district court under section 2097 should be included in the statement. Op. Atty. Gen., Jan. 7, 1932.

(46).

This section applies to a default action to foreclose a real estate mortgage though the action is tried to the court, and clerk's fees are limited to \$4.00. Op. Atty. Gen., Apr. 27, 1931.

6987-1. Fees of the clerk of the District Court.

In any county of this state where incumbents of the office of clerk of the district court prior to the incumbent holding office at the time of the passage of this act have neglected for six years to enter or file papers or other documents or index the same in such office which should have been entered or filed by them, and as a result thereof the county records are incomplete, the board of county commissioners may agree with the clerk of the district court to properly enter or file all such papers and documents and index the

same, and for such work may pay such clerk in addition to the salary and clerk hire provided by law, the fees provided for such work by General Statutes 1923, Section 6987; provided, that no such extra fee shall be paid for the doing of any work which should have been done by such incumbent. (Act Apr. 16, 1929, c. 207.)

6990. Clerks' fees to be retained in certain counties.

Op. Atty. Gen., Jan. 15, 1934; note under §2720-127.

6991. Fees, when paid—other fees.

In order to effect a change of venue, the deposit fee must be paid within the prescribed time. 178M617, 225 NW926.

6993. Fees of sheriffs.

Special Laws 1887, c. 363, creates a fee bill for Ramsey County. It was repealed by Laws 1911, c. 147.

Special Laws 1891, c. 373, §3, establishes a fee bill for Hennepin County. This act has never been repealed. See notes under §223 enumerating local laws affecting fees and compensation of sheriffs and their deputies.

Sheriff is entitled to mileage both going and returning from serving papers. Op. Atty. Gen., Feb. 14, 1929.

Sheriff in selling pledged property at auction under Mason's Stat. 1927, §8561, is entitled to \$1.50 for posting notices and \$3.00 for the sale. Op. Atty. Gen., May 20, 1929.

Deputy sheriff is not entitled to compensation to which the sheriff is not entitled. Op. Atty. Gen., May 17, 1930.

Sheriff is entitled to mileage for distance actually traveled, and where he receives flat rate for use of his automobile he is not entitled to mileage. A per diem is not allowable unless given by statute. Op. Atty. Gen., June 17, 1930.

County clerk is charged only with duty of preparing original citations in delinquent personal property tax proceedings, and it is the duty of the sheriff to prepare such copies as he needs for service, for which he may be allowed a reasonable compensation. Op. Atty. Gen., Aug. 1, 1930.

Sheriff is not entitled to a fee from the county for selling property on execution under a judgment in favor of county against sureties on a depository bond. Op. Atty. Gen., Dec. 23, 1930.

Sheriff is not entitled to charge any fees for time spent in appearing in habeas corpus proceedings. Op. Atty. Gen., May 6, 1931.

This section is affected as to the sheriffs of some counties by Laws 1931, c. 331, ante §§254-47, 254-48. Op. Atty. Gen., May 23, 1931.

A sheriff transporting a feeble-minded person to a state institution is entitled to reimbursement for his actual expenses in transporting the person mentioned, and where he uses his own car the expense may exceed seven cents per mile while the feeble-minded person is in the car. Op. Atty. Gen., June 15, 1931.

The general fee statute with reference to sheriffs is superseded by Laws 1917, c. 312, fixing the salaries of sheriffs in certain counties, and the sheriff of a county under that law is not entitled to fees or mileage for serving a criminal warrant. Op. Atty. Gen., Nov. 27, 1931.

Limit of indebtedness which may be contracted by county in anticipation of uncollected taxes pursuant to §1938-21, includes county charges under this section. Op. Atty. Gen., Apr. 28, 1932.

Sheriff is not entitled to reimbursement for damages to his own automobile. Op. Atty. Gen., Dec. 11, 1933.

(5). On sale of land under divorce decree providing that "said lien be enforced on execution according to law and statute provided for sale of property on execution" sheriff was merely entitled to ordinary fee for selling property under decree. Op. Atty. Gen., July 1, 1932.

Whenever a collection is made on execution after levy, sheriff is entitled to fees provided herein, but is not entitled to mileage in addition thereto. Op. Atty. Gen., Oct. 14, 1932.

(9). Sheriff is entitled to the usual mileage allowance in addition to the three dollar fee for serving a writ of restitution. Op. Atty. Gen., Oct. 5, 1931.

(10). A sheriff is entitled to charge \$1 in returning an execution unsatisfied except where the county may be a party. Op. Atty. Gen., Mar. 8, 1932.

Whenever the sheriff makes a partial collection or collects upon the execution in full, he is not entitled to charge \$1, but must obtain his fees out of the money so collected. Op. Atty. Gen., Mar. 8, 1932.

(22). Sheriffs are not entitled to per diem under Laws 1917, c. 312, in transporting insane person to state hospital. Op. Atty. Gen. (390c-6), Feb. 1, 1935.

(24). Sheriff may charge officials of another state a fee of \$4.00 per day in transporting a prisoner demanded by another state to the boundary line of this state. Op. Atty. Gen., May 6, 1931.

(25). If a sheriff serves different individuals with notices in two separate actions on the same trip, he is entitled to full mileage from the county seat and back for each action. Op. Atty. Gen., Aug. 5, 1930.

Where a number of services are made in the same action upon different persons, the sheriff is entitled to charge \$1.00 for each notice served, but only mileage for distance traveled and not full mileage from county seat and return for each individual service. Op. Atty. Gen., Aug. 5, 1930.

6994. Compensation of sheriffs, etc., in certain counties.

Op. Atty. Gen., July 11, 1932; note under §7005.

6995. Fees of coroners.

Coroner cannot charge fee for testifying as expert witness at inquest called by deputy. Op. Atty. Gen., Sept. 13, 1929.

This section is not superseded by Laws 1931, c. 331 (§§254-47, 254-48). Op. Atty. Gen., Oct. 14, 1932.

(1). A coroner who is also a physician and surgeon cannot claim compensation both as coroner and as physician making an autopsy, subdivisions 1 and 2 and not subdivision 4 governing. Op. Atty. Gen. (104b-5), Feb. 7, 1935.

(2). This section supersedes and amends sec. 952 as to coroners' fees. Op. Atty. Gen., Jan. 26, 1933.

6996. Fees of constables.

A constable serving at election polls is entitled to same compensation as a special officer. Op. Atty. Gen., Apr. 11, 1933.

Compensation of judges and clerks of election and peace officers cannot be diminished or increased by any other except legislature. Id.

Village constable or marshal working under a salary is entitled to collect fees for arrest for violations of ordinances or state laws under warrants, but may not collect fees for arrest made without warrants. Op. Atty. Gen. (273d1), Aug. 25, 1934.

Mileage under this section is not affected by Laws 1935 c. 225, amending Mason's Stat. §254-47. Op. Atty. Gen. (847a-5), July 17, 1935.

(10). A constable attending on justice's court is entitled to only \$1 per day regardless of the number of cases and regardless of whether or not the constable testifies therein. Op. Atty. Gen., Dec. 19, 1931.

(11). Mileage of ten cents provided for constables under this subdivision is not affected by Laws 1931, c. 331, ante, §§254-47, 254-48. Op. Atty. Gen., July 2, 1931.

A constable is entitled to mileage while transporting a prisoner to a county jail, and the amount of the allowance is not affected by Laws 1931, c. 331, ante, §§254-47, 254-48. Op. Atty. Gen., July 7, 1931.

(20). Amount of mileage allowance to constable for transporting prisoner to county jail is not affected by Laws 1933, c. 13. Op. Atty. Gen., Sept. 22, 1933.

6998. Fees of justices of the peace.

In computing folios for determining fees, all printed matter, as well as matter filled in, is considered. Op. Atty. Gen., Sept. 30, 1930.

A village requiring a justice of the peace to be on hand one-half day each week to try traffic violations has no authority to compensate the justice for his services. Op. Atty. Gen., Dec. 17, 1931.

A justice of the peace is authorized to charge for the drawing of a complaint only when he himself performs the work of drawing the same. Op. Atty. Gen., Dec. 19, 1931.

A justice of the peace is entitled to a fee of 25 cents for issuing a search warrant where the same has been prepared by someone else. Op. Atty. Gen., Dec. 19, 1931.

Where accused is not bound over, it is not necessary that justice of the peace enter testimony in full in his docket, and he is not entitled to the per folio rate in case he does so. Op. Atty. Gen., Dec. 19, 1931.

Limit of indebtedness which may be contracted by county in anticipation of uncollected taxes pursuant to §1938-21, includes county charges under this section. Op. Atty. Gen., Apr. 28, 1932.

Village incorporated under Laws of 1885 may not fix compensation of village justice of the peace. Op. Atty. Gen. (266a-13), Sept. 7, 1934.

Fees provided in this section govern amount to be received by municipal judge in city of fourth class. Op. Atty. Gen. (306b-4), Feb. 16, 1935.

(1). A justice of the peace is not entitled to fees for preparation of the copies of a garnishee summons. Op. Atty. Gen., Sept. 30, 1930.

(25). Justice of peace is entitled to 15c per folio for transcribing evidence taken at preliminary hearing and transmitting same to clerk of court, but he must pay expenses of stenographer or reporter. Op. Atty. Gen., Nov. 2, 1933.

Law does not require justice of peace to enter testimony in preliminary hearing in full in his docket and he is not entitled to folio rate in case he does so. Id.

(29). A justice of the peace is not entitled to fees for preparation of the copies of a garnishee summons. Op. Atty. Gen., Sept. 30, 1930.

6999. Fees in justice courts—Costs and disbursements.

(5). Question as to whether or not more than two witnesses testify as to any particular fact is matter for court to determine from testimony given. Op. Atty. Gen., Dec. 15, 1933.

7002. Fees of register of deeds—Certain counties.

Fees for recording instruments written on uniform conveyancing blanks, see §§8204-4, 8204-5.

Provision for guaranteed minimum income or salary refers to gross income, not exclusive of clerk hire. Op. Atty. Gen., Aug. 30, 1929.

Register of deeds is not entitled to additional fee for indexing instruments filed for record. Op. Atty. Gen., May 3, 1930.

A register of deeds has no right to charge less than schedule of fees set forth in Laws 1931, c. 272. Op. Atty. Gen., Feb. 23, 1932.

Mortgages upon printed form approved by Uniform Conveyancing Blank Commission should be recorded for

fees provided for in §3204-5, but if mortgage is not upon such approved form, fee is that specified by §7002 plus 25% or fee fixed by special act plus 25%. Op. Atty. Gen., Oct. 12, 1933.

Fees in connection with filing of chattel mortgage and rural credit lease, stated. Op. Atty. Gen., Jan. 27, 1934.

Fees for filing of certificates of consent to acquisition of land by United States are payable by the secretary of state to the register of deeds. Op. Atty. Gen. (373b-10(k)), Dec. 18, 1934.

Register of deeds is entitled to charge a fee of 10c for entering discharge of real estate mortgage in margins of record of mortgage. Op. Atty. Gen. (373b-10(c)), July 13, 1935.

(2).

A register of deeds is not required to furnish a filing receipt or a certificate without charge when a chattel mortgage is filed. Op. Atty. Gen. (373b-10(c)), July 5, 1934.

(8).

Register of deeds is not required to make search for liens prior to chattel mortgage or to make certificate as to prior lien, but if he does so, fees are fixed by this section. Op. Atty. Gen. (373b-11), June 1, 1934.

7005. Fees of appraisers, etc.

A county board may legally pay for services of special deputies hired by a sheriff to assist in handling unusual crowds during county fair. Op. Atty. Gen., Nov. 10, 1931.

Matter of compensation for persons employed by sheriff to guard prisoner while confined in hospital is governed by this section. Op. Atty. Gen., Apr. 1, 1932.

Where sheriff has no salaried deputy except jailer, and, after a home is robbed, takes with him special deputy to watch premises for several nights because he suspects that robbers will return, but makes no arrest, deputy cannot put in bill to county for per diem salary of \$3.00 per day. Op. Atty. Gen., July 11, 1932.

Sheriff may not appoint special deputy to attend jury in criminal case before Justice of Peace so as to require county to pay deputy \$3.00 per day, when defendant is not found guilty. Op. Atty. Gen., July 11, 1932.

7006. Fees of witnesses.

Laws 1931, c. 331, does not affect mileage of jurors or witnesses. Op. Atty. Gen., Feb. 25, 1933.

Neither sheriff nor his deputies are entitled to witness fees in connection with dependent neglected and delinquent children in juvenile court. Op. Atty. Gen., Nov. 24, 1933.

Traveling expenses of out of state witnesses may be paid from contingent fund of county attorney. Op. Atty. Gen. (196r), May 16, 1935.

(2).

Witnesses are allowed mileage plus fees in either civil or criminal cases. Op. Atty. Gen., Dec. 15, 1933.

7008. Fees in criminal cases.

Clerk of court may not give witnesses for defendant a certificate for fees and mileage with an order of the district court. Op. Atty. Gen., Oct. 5, 1931.

Witnesses actually in attendance called in good faith by county attorney in a criminal case are entitled to fees and mileage although not subpoenaed or placed on the stand. Op. Atty. Gen., Oct. 5, 1931.

One adjudged guilty of crime in justice court and acquitted on appeal to district court is not entitled to file claim with county board for witness fees and mileage in justice court. Op. Atty. Gen. (196r-1), June 4, 1935.

7009. Expert witnesses.

This section does not apply to actions in the federal court in view of Mason's U. S. Code, Annotated Title 28, §600c. Henkel v. Chicago, St. P. M. & O. Ry. Co., 284 US444, 52SCR223. See Dun. Dig. 10361.

This section cannot be applied in the federal courts. Henkel v. Chicago, St. P. M. & O. Ry. Co., (CCA8), 58F (2d)159.

Fact that expert witness is employed in service of state does not disqualify him from receiving compensation as expert witness. Bekkemo v. E., 186M108, 242NW 617.

Veterinary surgeons called as witnesses should receive only \$10.00 per day in absence of special circumstances. Bekkemo v. E., 186M108, 242NW617. See Dun. Dig. 10361.

Expert witness fees allowable under state statute not taxable as costs in federal courts. 16MinnLawRev855.

7010. Compensation of jurors.—Each grand and petit juror shall receive three dollars per day, including Sundays, for attendance in district court, and ten cents for each mile traveled in going to and returning from court in counties having a population of less than two hundred twenty-five thousand, and two (\$2.00) dollars per day in counties having a population of more than two hundred and twenty-five thousand and less than three hundred and fifty thousand and three (\$3.00) dollars per day and mileage as above set forth, in counties having a population of over three hundred and fifty thousand, the distance to be computed by the usually traveled route, and paid out of the county treasury. The clerk of the district court shall deliver to each juror a certificate for the number of days' attendance and miles traveled for which he is entitled to compensation. Talesmen actually serving upon any petit jury shall receive the sum of \$3.00 per day. (R. L. '05, §2712; '09, c. 1929, §1; G. S. '13, §5778; '19, c. 73, §1; '21, c. 95, §1; Mar. 28, 1933, c. 123, §1.)

Sec. 2 of Act Mar. 28, 1933, cited, provides that the act shall take effect from its passage.

Juror serving for six days was only entitled to six days pay though on second and fourth days he deliberated on cases until after midnight. Op. Atty. Gen., June 11, 1929.

District court has inherent power to allow mileage to jurors in going to and from their homes when they are excused on Friday. Op. Atty. Gen., Jan. 20, 1932.

Limit of indebtedness which may be contracted by county in anticipation of uncollected taxes pursuant to §1938-21, includes county charges under this section. Op. Atty. Gen., Apr. 28, 1932.

Talesmen chosen as jurors on Friday and who are free until following Monday by reason of adjournment of jury cases are entitled to jury fees for Saturday and Sunday. Op. Atty. Gen., Feb. 15, 1933.

Laws 1931, c. 331, does not affect mileage of jurors or witnesses. Op. Atty. Gen., Feb. 25, 1933.

"Attendance in district court" means actual attendance at court, and not time while panel is excused for definite time or court is adjourned to fixed day. Op. Atty. Gen., May 16, 1933.

Juror is not entitled to compensation for Sunday where court adjourns over week-end. Id.

7012. Fees of court commissioner.

Court commissioner is not entitled to mileage when conducting insanity hearings away from county seat. Op. Atty. Gen., Aug. 14, 1933.

7013. [Repealed].

Repealed Feb. 21, 1931, c. 22.

7014. Fees for services not rendered.—Illegal fees.

Op. Atty. Gen., Dec. 19, 1931; note under §6998.

7018. Turning fees into county treasury.

Fees collected by the clerk of the district court under §3208 are payable into the county treasury under this section in counties where a definite salary is provided for the clerk. Op. Atty. Gen., Jan. 18, 1930.

County auditor must turn into county all fees received, including fees for making of certified copies of official records. Op. Atty. Gen., Nov. 28, 1931.

Where county officials receive a stated salary, they are liable to the county for all fees to be charged by law for the performance of their official duties, whether such fees are actually collected by such officials or not. Op. Atty. Gen., Feb. 29, 1932.

County treasurer is not entitled to a fee for preparing tax lists for banks desiring to remit taxes for their customers. Op. Atty. Gen., May 19, 1933.

Registers of deeds may carry item for fees in connection with administration of chattel mortgages for loan made by federal emergency crop and seed loan section of Farm Credit Administration. Op. Atty. Gen. (833d), Jan. 30, 1935.

CHAPTER 49A

Trade and Commerce

1. Contracts and written instruments in general.

2. —Mutual Assent.

Offer made by director of national bank to settle liability arising from his acts as director, held to have been accepted by the receiver of the bank so as to constitute a binding contract. Karn v. Andresen, (DC-Minn), 51F(2d)521, aff'd 60F(2d)427.

It is not the subjective thing known as meeting of the minds, but an objective thing, manifestation of mutual

assent, which makes a contract. Benedict v. P., 183M 396, 237NW2. See Dun. Dig. 1742(57).

In the absence of conflicting legal requirement, mutual assent may be expressed by conduct rather than words. Benedict v. P., 183M396, 237NW2. See Dun. Dig. 1742.

Agreement of second mortgagee to pay interest on first mortgage if foreclosure was withheld, held not invalid for want of mutuality. Bankers' Life Co. v. F., 188M349, 247NW239. See Dun. Dig. 1758.